

**FILED**

Harveston v. Cunningham, 05-35073

**JAN 05 2007**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

Schroeder, Chief Judge, dissenting:

I respectfully disagree with the conclusion that on this record the officers are entitled to immunity. There is conflicting evidence in the record as to whether the officers were told that someone inside needed help. If the officers had information that someone inside needed help, even though there was no visible or audible disturbance at the scene when they arrived, qualified immunity would be proper. The dispatch report in the circumstances of this case is not sufficient to justify immunity for a warrantless entry into a residence. In my view there is a disputed issue of material fact and for that reason I cannot join the majority's disposition.